

CITY OF PINEVILLE, KY

ORDINANCE NO: _____

**AN ORDINANCE REGULATING THE SALE OF ALCOHOLIC
BEVERAGES WITHIN THE CITY LIMITS
OF PINEVILLE, KENTUCKY**

Whereas, an election was held on August 16, 2005, pursuant to KRS 242.185(6) as to whether the City of Pineville, would permit the limited sale of alcoholic beverages within the city limits of Pineville, and

Whereas, a majority of the citizens of the City of Pineville, have voted in favor of the limited sale of alcoholic beverages, and

Whereas, the City may impose certain restrictions, regulations, and license fees upon such retail establishments that wish to sell alcoholic beverages, and

Now Therefore, Be It Hereby Ordained by the City Council of the City of Pineville, Kentucky, as follows:

Sec. 1.00 Alcohol Beverage Control**Sec. 1.01 SHORT TITLE**

This Ordinance shall be known and may be cited as the Alcoholic Beverage Control ("ABC") Ordinance of the City of Pineville ("City").

Sec. 1.02 DEFINITIONS

As used in this chapter, unless the context clearly indicates or requires a different meaning, the words and terms defined in Kentucky Revised Statute 241.010 shall apply.

Sec. 1.03 INCORPORATION OF STATE LAW

(A) The provisions of the State Alcoholic Beverage Control laws contained in KRS Chapters 241, 242, 243, and 244, pertaining to licenses and regulations of the State Alcoholic Beverage Control Board, including definitions contained therein, as well as amendments and supplements thereto, are hereby adopted as part of the alcoholic beverage control law of the City, except as otherwise lawfully provided herein.

(B) No person shall sell, deal in, barter or exchange or possess for sale, or for the purpose of evading any law or ordinance, give away any alcoholic beverage in any quantity whatever, or cause the same to be done, without complying with all of the provisions of this chapter and all statutes and regulations of the state applicable thereto. Penalty, see Section 5.00.

Sec. 1.04 SCOPE OF COVERAGE

(A) This chapter shall be construed to apply to the traffic in both malt beverages and distilled spirits and wine where the context permits such applications.

(B) Nothing contained in this chapter shall excuse or relieve the owner, proprietor, employee or person in charge of any licensed premises in the city, where alcoholic beverages are sold, from the restrictions, requirements and penalties of any other ordinances of the city or of any other statutes of the state relating to violations pertaining to alcoholic beverages.

Sec. 2.00 Administration and Control

Sec. 2.01 ALCOHOLIC BEVERAGE CONTROL ADMINISTRATOR

The duties of the City Alcoholic Beverage Control (ABC) Administrator shall be assigned to the office of the Mayor. The local ABC Administrator may recommend regulations as may be necessary to implement this chapter. Any such regulations shall be presented to the City Council for approval. The ABC administrator shall be a member of the Pineville City Police Department.

Sec. 2.02 OATH AND BOND OF LOCAL ABC ADMINISTRATOR AND EMPLOYEES

(A) The ABC Administrator before entering upon his duties as such, shall take the oath prescribed in section 228 of the Constitution, and shall execute a bond with a good corporate surety in the amount of not less than one thousand dollars (\$1,000.00).

(B) The ABC Administrator may require any city employee under his supervision to execute a similar bond in such amount, as he deems necessary.

Sec. 2.03 FUNCTIONS, DUTIES AND POWERS

(A) The functions of the City ABC Administrator shall be the same with respect to the city license and regulations, as the functions of the Kentucky Alcoholic Beverage Control Board ("Board") with respect to state licenses and regulations, as provided in KRS 241.060, except that no regulation of the ABC Administrator shall be less stringent than the statutes relating to alcoholic beverage control, or the regulations of the Board. **["No regulation of the ABC Administrator shall become effective until approved by the Board." This provision is no longer necessary. Deleted. - SK]**

(B) The ABC Administrator shall have the same powers and duties with respect to suspension and revocation for cause of city licenses as the State Alcoholic Beverage Control Board has with respect to state licenses under KRS 241.060. The ABC Administrator, on his own initiative or on the complaint of any person, may institute proceedings to revoke or suspend any license issued under this chapter.

Sec. 2.04 POLICE POWER

The City ABC Administrator and his designee shall have the full police powers of law enforcement officers, and their jurisdiction shall be co-extensive with the boundaries of the City. They, along with any City of Pineville law enforcement officer, may inspect any premises where alcoholic or malt beverages are sold, stored or otherwise trafficked. ["without first obtaining a search warrant" is a power reserved for first class cities under KRS 241.170(1). Deleted. Better solution is consent to search. - SK] Application for a license under this ordinance shall constitute irrevocable knowing, voluntary and informed consent to such inspections. City law enforcement officers shall have full police powers while performing any such inspections.

Sec. 2.05 RIGHT OF INSPECTION

The City ABC Administrator and his designee shall have available at all reasonable times for their inspection all books and records required to be maintained by licensees under KRS 244.150 and the City ABC Administrator shall receive copies of all reports submitted by licensee to the State Alcoholic Beverage Control Board.

Sec. 2.06 APPEALS FROM CITY ABC ADMINISTRATOR

Appeals from the order of the City ABC Administrator may be taken to the state Alcoholic Beverage Control Board by filing with the board, within thirty (30) days, a certified copy of the orders of the City ABC Administrator. The board shall hear matters at issue as upon an original proceeding.

Sec. 3.00 License and Taxes

Sec. 3.01 LICENSE REQUIRED FOR SALE

No person shall sell or dispense at retail, or have in his possession for sale, any alcoholic or malt beverage, nor manufacture or transport any alcoholic or malt beverages in the City unless he shall first procure and have issued to him a license under the provisions of this chapter and all statutes of Kentucky and regulations adopted pursuant to this chapter. All licenses shall remain property of the City.

Sec. 3.02 LIMITED RESTAURANT ALCOHOLIC BEVERAGE BY THE DRINK LICENSE; FEES

(A) The City shall have the power and authority to issue licenses for the sale of alcoholic beverages by the drink at restaurants and dining facilities which seat a minimum of one hundred (100) persons inside the building and derive a minimum of seventy percent (70%) of their annual gross receipts from the sale of food. The fee for this city license will be \$800.00 per year.

["(B) The City license fee for the sale of alcoholic beverages during extended hours will be \$0.00 per year.

(C) The City license fee for the sale of alcoholic beverages on Sunday will be \$0.00 per year." Because this suggests extended hours and Sunday sales are permissible for free, it is deleted. - SK]

Sec. 3.03 DATE LICENSES EXPIRE; PRORATION

All licenses issued by the City shall be valid for a period of no more than one year. All licenses shall expire on May 31 of each year. Applications for renewal are to be filed with the City at least fifteen (15) days prior to expiration. When any person applies for a new license he shall be charged the full fee for the respective license if six (6) months or more remain before the license is due to be renewed and one-half (1/2) the fee if less than six (6) months remain before the license is due to be renewed. In the event any licensee shall cease doing business for any reason, no refund of the City license fee shall be granted.

Sec. 3.04 PERSONS WHO MAY NOT BE LICENSED

A person shall not become a licensee under this chapter for any of the reasons stated in KRS 243.100.

Sec. 3.05 PREMISES THAT MAY NOT BE LICENSED FOR SALES AT RETAIL

No license for the sale of alcoholic beverages at retail shall be issued for any premises unless the applicant for the license is the owner of the premises or is in possession of the premises under a written lease or a permit for a term of not less than the license period.

Sec. 3.06 BUSINESSES AUTHORIZED BY RETAIL DRINK LICENSE

A limited restaurant alcoholic beverage by the drink license shall authorize the licensee to purchase, receive, possess, and sell distilled spirits and wine at retail by the drink for consumption on the licensed premises. The licensee shall purchase distilled spirits and wine only from licensed wholesalers. A licensee may purchase wine in containers not smaller than one hundred (100) milliliters if the wine does not exceed fourteen percent 14% alcohol by volume. A licensee may buy mixed drinks in containers of a capacity not smaller than three hundred fifty-five (355) milliliters if the mixed drinks contain a substantial proportion of carbonated water. A retail drink license shall not authorize the licensee to sell distilled spirits or wine by the package.

Sec. 3.07 PUBLIC NOTICE OF INTENT TO APPLY FOR LICENSE

Any person, corporation, partnership, or any other entity, except an applicant for the same license for the same premises, or an applicant for a supplemental bar license shall before applying for a license advertise, by publication in The Pineville Sun [~~"The London Sentinel Echo"~~ Deleted- SK], his or her intention to apply for a license as stipulated in KRS 243.360.

Sec. 3.08 LOCAL ADMINISTRATOR TO FIRST APPROVE APPLICATION

An applicant for an alcoholic beverage license must have his city license approved by the City Alcoholic Beverage Control Administrator before they are eligible to apply for a state license.

Sec. 3.09 APPLICATION FOR STATE LICENSE

All applicants for alcoholic beverage licenses must submit an application to the state as stipulated in KRS 243.380.

Sec. 3.10 SUBMITTAL OF APPLICATION

An applicant for a license under this chapter shall file with the City Alcoholic Beverage Control Administrator a copy of his state license application containing the information required by KRS 243.380 and 243.390. The City application shall include the consent of the applicant permitting the City ABC Administrator to inspect and search the licensed premises at any reasonable time, to confiscate articles found on the premises in violation of any ordinance or statute, and to order an emergency temporary closure of the premises if the public health, safety, morals and welfare is threatened by one or more violations of any ordinance or statute involving disturbance of the peace or public disorder. The temporary closure shall remain in effect until review of the alleged violations by the City ABC Administrator within thirty-six (36) hours.

Sec. 3.11 CAUSES FOR REFUSAL TO ISSUE OR RENEW LICENSE; SUSPENSION OR REVOCATION OF LICENSE.

(A) State Law References. Causes for refusal to issue or renew a license and for suspension or revocation of a city license shall be the same as provided for state licenses according to KRS 243.450, 243.490, 243.500, as well as violation of any city ordinance regarding beverage licensing, sales, or the administration of licenses.

(B) Delinquent Taxes or Fees. No license to sell alcoholic or malt beverages shall be granted or renewed to any person who is delinquent in the payment of any taxes or fees due the City at the time of issuing the license; nor shall any license be granted or renewed to sell upon any premises or property, owned and occupied by the licensee upon which there are any delinquent taxes or fees due the City. If a licensee becomes delinquent in the payment of any taxes or any fees due to the City at any time during the license period, the license to sell alcoholic or malt beverages shall be subject to revocation or suspension. The City ABC Administrator may, in his discretion, approve a license to sell after receiving from the City Clerk, a written statement to the effect that the applicant for the license has paid or has made satisfactory arrangements with the City Clerk for taking care of the indebtedness represented by the unpaid and delinquent taxes or fees. This section shall apply only to taxes and fees, which are due and payable by the licensee.

(C) Failure to Meet Seating Standards. A cause for refusal to issue or renew a license and for suspension or revocation of a city license shall occur if the licensee ceases either to provide a minimum of one hundred (100) seats or derive a minimum of seventy percent (70%) of their annual gross receipts from the sale of food.

(D) Location. Only premises doing business directly on or adjacent to US25E shall be eligible to make use of a license under this chapter. The location of a premises desiring to make use of a license under this chapter shall be approved by the City ABC Administrator and conform with applicable regulations and ordinances.

(E) Appeals. Appeals may be taken from decisions of the City ABC Administrator to the State Alcoholic Beverage Control Board according to the provisions of KRS 241.200 and 243.550.

Sec. 3.12 APPROVAL OR DENIAL OF APPLICATION

(A) If upon review of the application, the City ABC Administrator determines that the applicant has complied with all requirements of the Alcoholic Beverage Control Law, as well as all regulatory provisions of this chapter, that the location is one that can be approved, including but not limited to the requirements of KRS 243.220 and 242.185(6), that a license may be issued within the rules fixed by the State Alcoholic Beverage Control Board, and that there are no causes for denial of the license, the City ABC Administrator shall approve the application.

(B) If the City ABC Administrator has reasonable grounds to believe that an applicant has violated any law, rule or regulation relating to alcoholic beverages, he may issue to the applicant a written order setting forth such violation and requiring the applicant to show cause why the requested license should be issued. The City ABC Administrator shall have the right to order, and the applicant shall have the right to request, an evidentiary hearing to examine the violation set forth in the show cause order issued by the City ABC Administrator. Any decision by the City ABC Administrator on the application shall be subject to appeal as provided by law.

Sec. 3.13 PAYMENT OF FEES, REFUND OF FEE

Upon approval of the application by the City ABC Administrator, the applicant shall pay the amount of the license fee provided in this chapter in the form of a certified check, money order or cash. Payment shall be held in deposit by the City pending state license approval and issuance of the City license by the City ABC Administrator.

If the payment of a license fee was erroneously made or the licenses are not issued, the City shall authorize the payment of the refundable amount.

Sec. 3.14 ISSUANCE OF CITY LICENSES

The City licenses shall be issued and the fees collected by the City Clerk. No license shall be issued by the clerk without the approval of the City ABC Administrator. The license shall be in form of a standard City Business License and a business license category shall hereby be established as a Limited Restaurant Alcoholic Beverage by the Drink License. The fees shall be those established in Section 3.02 of this ordinance and shall not replace ["the standard business license fees"] any other fee or tax, including but not limited to business and occupational license tax required in other city ordinances.

Sec. 3.15 POSTING OF LICENSES

Each city license in the same form prescribed by KRS 243.440 for state licenses shall be posted at the licensed premises in the same manner prescribed by KRS 243.620 for state licenses. An exact duplicate or facsimile of each city license shall remain in the City Clerk's office as part of the public record.

Sec. 3.16 TRANSFER, ASSIGN, OR ACQUIRE EXISTING LICENSE

The transfer, assigning or acquisition of a city license shall be the same as provided for in state licenses in KRS 243.630, 243.650, and 243.660.

Sec. 3.17 APPLICANT TO PAY FOR OWN LICENSE

The license fee for a city license shall be payable by the person who makes application for the license and to whom it is issued, and no other person shall pay for any license issued under these sections.

Sec. 3.18 DEPOSIT OF FEES

All moneys derived from license fees or from fines as provided in this chapter shall be paid to the treasury of the City and become a part of the general funds of the City.

Sec. 3.19 LICENSE TO BECOME VOID IF BUSINESS DORMANT; LICENSE RENEWAL

(A) Surrender of license and exceptions. Any license under which no business is transacted during a period of ninety (90) days shall become null and void. At the expiration of the ninety (90) day period the license shall be surrendered to the City ABC Administrator, except that any licensee who is unable to continue in business at the licensed premises may apply to the Commonwealth of Kentucky Alcoholic Beverage Control Department, pursuant to 804 KAR ["4:1110" -- This reference is erroneous. Replace with 804 KAR 4:110. -- SK] 4:110 as amended, from time to time to continue such license in dormancy. In the event a period of dormancy is applied for or granted by the ABC Administrator to the licensee, the licensee shall immediately notify the City ABC Administrator. Upon resumption of business or transfer or assignment of the license, the licensee shall notify the City ABC Administrator and a fee shall be due and payable to the City for the period the license was in dormancy in the same amount due had the license remained active for the same period.

(B) Applications based on pending construction or development Applications approved by the City ABC Administrator and based on pending construction or development on the premises shall be null and void after ninety (90) days of the commitment to issue a license if the applicant fails to proceed in an orderly fashion to initiate construction or development on the premise involved. The ABC Administrator may grant extensions, as he deems appropriate in exercise of his sound discretion based on facts and circumstances surrounding each request.

(C) Renewals: Time for filing. All renewal of licenses and payment of license fees must be on file with the City ABC Administrator fifteen (15) days before the expiration of the license for the preceding license period or the license shall be canceled, except that the licensee may file a written, verified statement fifteen (15) days prior to the expiration date of the license, setting forth the facts justifying an extension. The ABC Administrator may then extend the time for filing of a renewal of the license for a reasonable length of time within the exercise of his sound discretion. The licensee shall pay the licensee fee from the expiration date of the former license or licenses and payment shall be refunded to the licensee in the event that the license or licenses are not renewed at, or before, the end of the extension period.

Sec. 4.00 Prohibitions, Restrictions and Regulations

Sec. 4.01 HOURS OF SALE

(A) Retail Sale for Consumption on Licensed Premises. Premises for which there had been granted a license for the retail sales of alcoholic beverages by the drink, shall be permitted to remain open between the hours of 10: a.m. and 12:00 midnight each day of the week, except Sundays. However, sales may not be conducted at any time when the polls are open for any

election in the precinct in which the license is granted. However, if the licensee provides a separate area within his licensed premises capable of being locked and closed off within which is kept all stocks of alcoholic beverages and malt beverages and if the department is kept locked during the foregoing time he is not permitted to remain open to sell alcoholic beverages, he shall be deemed to have complied with this subsection.

(B) Alcoholic beverages may not be sold or dispensed on Sundays.

(C) The licensee may sell and dispense alcoholic beverages on New Years Eve until 2:00 a.m. on January 1, regardless of the day of the week on which New Years Eve occurs, provided that the appropriate licenses have been obtained from both the City and State ABC Commission. If New Year's Eve falls on a Sunday, alcoholic beverages may be sold and dispensed only after 6:00 p.m.

(D) Control of Premises During Closing Hours. Subject to Sec. 4.02 below, during the closing hours, the premises of any license for the sale of alcoholic beverages by the drink must be closed to and vacant of all customers and all persons except the licensee and his employees, who shall be allowed on the premises for business purposes only. Alcoholic beverages shall not be sold, given away, delivered or consumed by anyone in any room of the premises during the closing hours and no parties, private or public, shall be held on the premises. The premises shall not be loaned, rented or leased to anyone during closing hours for a party or for any other purposes.

Sec. 4.02 HOURS OF SALE; EXCEPTIONS; REQUIREMENTS

The licensee shall be allowed to remain open during hours when the sale of alcoholic beverages is prohibited for the sole purpose of providing food services to the public. However, all stocks of alcoholic beverages shall be locked and closed off from the public during said time period.

Sec. 4.03 FOOD SERVICE REQUIREMENT

All license holders of a Limited Restaurant Alcoholic Beverage By The Drink License shall be required to maintain food service during all hours that alcohol is served.

Sec. 4.04 CONFISCATION AUTHORIZED IF VIOLATIONS OCCUR

If any alcoholic or malt beverages are found on the outside of the locked or closed off area of any licensed premises at any hours during which the licensee is prohibited by the State Alcoholic Beverage Control Act or by this ordinance from selling alcoholic or malt beverages, a prima facie presumption shall arise that such alcoholic or malt beverages were kept outside the locked or closed-off section for the purpose of sale in violation of this chapter and the State Alcoholic Beverage Control Act and shall be grounds for revocation or suspension of the license. In addition to other penalties provided for the violation of this chapter, the City Alcoholic Beverage Control Administrator is hereby authorized to confiscate the alcoholic or malt beverages.

Sec. 4.05 ADVERTISING RESTRICTIONS

(A) Signage which refers directly, or indirectly, to alcoholic beverages shall be limited to one (1) two (2) square foot sign, for each fifty (50) square feet of glass window, that must be displayed from the inside of the window or interior of the business. No additional signs, banners, posters or other type of display advertising which refers either directly, or indirectly, to alcoholic beverages shall be displayed on, nor shall it be visible from, the exterior of any premises licensed for the sale of alcoholic beverages, except that reference to such may be included in the name of the business. This restriction shall not prevent any licensee from placing in the windows of the licensed premises business price cards not larger than two and one-half (2 1/2) inches in size, setting forth the price at which he offers alcoholic beverages for sale.

(B) No flashing lights shall be used to illuminate the exterior of any premises licensed under this chapter.

(C) It shall be unlawful for a licensee under this chapter to distribute or cause to be distributed any handbills, circulars or cards as a medium for advertising alcoholic beverages.

(D) It shall be unlawful for any person, holding a license under this chapter to sell alcoholic beverages of any kind, to give away or offer to give away anything tangible of value as a premium or prize, or for any other purpose in connection with the sale of alcoholic beverages.

(E) Any advertising by any licensee under this chapter shall be in compliance with KRS 244.130.

Sec. 4.06 TREATING PROHIBITED

No license holder shall give away any alcoholic beverage in any quantity for less than a full monetary consideration, which must be a sum equal to the usual sale prices at the establishment and above cost.

Sec. 4.07 LICENSEE TO PURCHASE FROM AND SELL ONLY TO PERSONS AUTHORIZED TO SELL OR PURCHASE

(A) No licensee shall purchase or agree to purchase any alcoholic beverages from any person within or without this state, who is not licensed to sell the beverages to the particular purchaser at the time of the agreement to sell, nor give any order for any alcoholic beverages to any person who is not a holder of a special agents or solicitors license if such a license is required.

(B) No licensee shall sell, or agree to sell, any alcoholic beverage to any person within or without this state who is not legally authorized to buy and receive the beverages at the time of the agreement to sell, nor secure any order for the sale of any alcoholic beverages through any person who is not the holder of a special agents or solicitors license.

Sec. 4.08 RETAIL SALES TO CERTAIN PERSONS PROHIBITED

No retail licensee shall sell, give away or deliver any alcoholic beverages, or procure or permit any alcoholic beverages to be sold, given away or delivered to:

(A) A minor, except that in any prosecution for selling alcoholic beverages to a minor it is an affirmative defense that the sale was induced by the use of false, fraudulent, or altered identification papers or other documents and that the appearance and character of the purchaser were such that his age could not have been ascertained by any other means and that the purchaser's appearance and character indicated strongly that he was of legal age to purchase alcoholic beverages. The evidence may be introduced either in mitigation of the charge or as a defense to the charge itself;

(B) A person actually or apparently under the influence of alcoholic beverages;

(C) A habitual drunkard or any person convicted of drunkenness as many as three (3) times within the most recent twelve (12) month period; or

(D) Except as provided in Section C above, anyone known to the seller to have been convicted of D.U.I. or any other misdemeanor attributable directly or indirectly to the use of alcoholic beverages, or for a felony within the preceding twelve (12) months.

Sec. 4.09 SALE TO PERSON NOT PROVIDING FOR HIS FAMILY PROHIBITED

No licensee shall sell or agree to sell any alcoholic beverages or cause or permit any alcoholic beverage to be sold to any person who has been reported to the licensee by any court or by any officer acting at the direction of a court as having failed to make proper provision for his family.

Sec. 4.10 LICENSEE TO DISPLAY NOTICE AS TO SALE TO MINORS; WARNING OF DANGERS OF DRINKING DURING PREGNANCY TO BE POSTED

(A) Every retail licensee shall display at all times in a prominent place a printed card at least eight (8) inches by eleven (11) inches in size which shall show, in thirty (30) point or larger type, substantially as follows:

Persons under the age of twenty-one (21) are subject to a fine up to One Hundred Dollars (\$100.00) if they:

- (1) Enter licensed premises to buy, or have served to them, alcoholic beverages.
- (2) Possess, purchase or attempt to purchase, or get another to purchase alcoholic beverages.

(3) Misrepresent their age for purpose of purchasing or obtaining alcoholic beverages.

(B) All licensed retail vendors of alcoholic beverages shall post in prominent place easily seen by patrons a printed sign at least eleven (11) inches by fourteen (14) inches in size, with letters at least one (1) inch high, supplied by the Alcoholic Beverage Control Commission, and with gender-neutral language supplied by the Cabinet for Health Services, which shall warn that drinking alcoholic beverages prior to conception or during pregnancy can cause birth defects.

Sec. 4.10 MINORS NOT TO POSSESS OR PURCHASE LIQUOR NOR TO MISREPRESENT AGE-USE OF FRAUDULENT IDENTIFICATION

(A) As used in KRS 244.083 and this section; Premises has the meaning it is given in KRS 241.010 and also means the place of business of a person licensed to sell alcoholic beverages.

(B) A person under 21 years of age shall not enter any premises licensed for the sale of alcoholic beverages for the purpose of purchasing or receiving any alcoholic beverages.

(C) A person under 21 years of age shall not possess for his or her own use or purchase or attempt to purchase or have another purchase for him or her any alcoholic beverages. No person shall aid or assist any person under 21 years of age in purchasing or having delivered or served to him or her any alcoholic beverages.

(D) A person under 21 years of age shall not misrepresent his or her age for the purpose of inducing any licensee, or the licensed agent, servant, or employee, to sell or serve any alcoholic beverages to the underage person.

(E) A person under 21 years of age shall not use, or attempt to use any false, fraudulent, or altered identification card, paper, or any other document to purchase or attempt to purchase or otherwise obtain any alcoholic beverage.

Sec. 4.11 PERSONS WHOM LICENSEES MAY NOT EMPLOY

(A) A person holding any city license shall not knowingly employ in connection with his or her business any person who:

(1) Has been convicted of any felony within the last two (2) years;

(2) Has been twice convicted of any misdemeanor or offense directly or indirectly attributable to the use of intoxicating liquors within the last two (2) years;

(3) Is under the age of twenty (20) years, unless the person is employed in a capacity that does not involve the sale or serving alcoholic beverages; or

(4) Within two (2) years prior to the date of his employment, has had any license issued under KRS 243.020 to 243.670 or under any other act or ordinance relating to the regulation of the manufacture, sale, or transportation of alcoholic beverages revoked for cause.

(B) The provisions of paragraph (1) and (2) of subsection (A) of this section shall not apply if the employees duties do not involve the sale, service, delivery, or traffic in alcoholic beverages at the licensed premises.

(C) Violation of this section shall subject both employer and employee to penalties provided in this chapter and shall be cause for revocation of license.

Sec. 4.12 RETAIL PREMISES NOT TO BE DISORDERLY

(A) No person licensed to sell alcoholic beverages at retail shall cause, suffer, or permit the licensed premises to be disorderly.

(B) Acts, which constitute disorderly premises, consist of permitting patrons to cause public inconvenience, annoyance or alarm, or wantonly creating a risk through:

- (1) Engaging in fighting or in violent, tumultuous or threatening behavior, or
- (2) Making unreasonable noise; or
- (3) Refusing to obey any official order to disperse issued to maintain public safety in dangerous proximity to a fire, hazard, or other emergency; or
- (4) Creating a hazardous or physically offensive condition by an act that serves no legitimate purpose; or
- (5) Conducting promotional efforts that are not customary or usual for a restaurant operation (e.g. wet t-shirt contest); or
- (6) Conducting any activity regulated by the City's adult business ordinance(s).
- (C) No person licensed to sell alcoholic beverages at retail shall cause, allow or permit dancing or karaoke singing or pool tables on the premises which holds a city license.

Sec. 4.13 Mandatory Responsible Beverage Service Training

- (A) All persons employed as managers in the selling and serving of alcoholic beverages and employees that handle alcohol shall participate in and satisfactorily complete the STAR Certification Program sponsored and conducted by the Kentucky Alcoholic Beverage Commission. [STAR training is mandatory. Accordingly the following prior language is deleted – SK – “complete a City-approved responsible beverage training program. For such a program to be approved by the City, it must effectively train participants in the identification of false documents and recognition of characteristics of intoxication. The City will not require enrollment in a specific class, but only that the training be obtained from a recognized program meeting the goals presented in this ordinance.”]
- (B) All persons required to complete training, under paragraph (A) above shall complete that training within one hundred eighty (180) days of the date on which the person first becomes subject to the training requirement.
All persons completing the training required by this section shall be re- certified in responsible beverage service training, by a City approved program not less than once every three years thereafter.
- (C) Each restaurant licensed by this ordinance must at all times that alcoholic beverages are being served have at least one person currently certified in responsible beverage service training, as required in paragraphs (A) and (B) above, on duty.
- (D) The manager of the restaurant shall be responsible for compliance with these requirements and shall maintain for inspection by the City ABC Administrator a record on each employee that shall contain the pertinent training information.

Sec. 5.00 Regulatory License Fee

Sec. 5.01 REGULATORY LICENSE FEE IMPOSED

(A) A regulatory license fee is imposed on the gross receipts from retail sales of alcoholic beverages under each license issued for the purpose of insuring full reimbursement to the City for the cost of any additional policing, regulatory, or administrative expenses related to the sale of alcoholic beverages in the City. The City Council shall adopt, at the budget adoption for the fiscal year, an annual rate for the regulatory license fee as shall be reasonably estimated to insure full reimbursement to the City for the cost of any additional policing, regulatory, or administrative expenses related to the sale of alcoholic beverages in the City. The regulatory license fee shall be in addition to any other taxes, fees or licenses permitted by law, but a credit against the fee shall be allowed in an amount equal to any licenses or fees imposed under the provisions of this chapter for the retail sale of alcohol.

(B) The regulatory license fee shall be seven percent (7%) for the fiscal year beginning January 1, 2005 and continuing thereafter until amended or repealed.

Sec. 5.02 PAYMENT

Payment of such fee shall accompany forms approved for use by the ABC Administrator and shall include a tabulation of both gross food sales and alcohol sales for the preceding month. The forms and payment shall be submitted to the City Clerk by the twentieth (20th) day of each month for the preceding months sales. The fraction, represented by one divided by the number of months for which the City license was issued, of any fees required under the provisions of this chapter shall be deducted each month as a credit.

Sec. 5.03 FAILURE TO PAY; INTEREST ON LATE PAYMENT

Failure to pay the monthly remittance within ten (10) days after the due date shall constitute a violation of this chapter.

Interest shall be assessed upon any past due payments at the rate of twelve (12) percent per annum.

Sec. 5.04 PENALTY FOR NONPAYMENT

If the holder of any license shall fail to pay the regulatory license fee imposed by this Section within ten (10) days of the due date, an automatic penalty of Fifty and 00/100 Dollars (\$50.00) shall be assessed for the first offense. An automatic penalty of One Hundred and 00/100 Dollars (\$100.00) shall be assessed on the second offense, and an automatic penalty of Two Hundred and 00/100 Dollars (\$200.00) shall be assessed on the third offense. In addition to the monetary penalty, the City Alcoholic Beverage Control Administrator shall hold a hearing for a second and third offense requiring the licensee to show cause why the license should not be suspended or revoked with full authority to do so upon appropriate findings. The calculation of the number of offenses for the purpose of invoking the above penalties shall be done on a twelve (12) month basis, with the number of offenses being reduced to zero at the beginning of each new license period.

Sec. 5.05 ADEQUATE RECORDKEEPING

Every licensee shall keep and maintain adequate books and records of all transactions involved in the sale of alcoholic beverages in the same manner required by the rules and regulations of the State Alcoholic Beverage Control Board, or such rules and regulations as may be from time to time promulgated by the City Alcoholic Beverage Control Administrator and approved by a majority of a quorum of the City Council. Where the sales of alcoholic beverages as they relate to other sales are determinative of the licensee's eligibility to retain a license, the licensee shall maintain adequate records to show that relationship. The books and records shall be available at all reasonable times for inspection by the City Alcoholic Beverage Control Administrator or any authorized representative.

Sec. 5.06 AUDIT REQUIREMENTS

The City Alcoholic Beverage Control Administrator may at his discretion require that a licensee make his records available to the City for the purpose of conducting an audit to verify compliance with the seventy percent (70%) food sales requirement.

Sec. 5.07 PENALTIES

(A) Any person who violates any provision of this chapter for which no specific penalty is provided shall be guilty of a misdemeanor and shall, in addition to other penalties provided by law, be subject to the following penalties:

- (1) For the first offense a fine not to exceed Five Hundred and 00/100 Dollars (\$500.00) and
- (2) For any subsequent offense a fine not to exceed Five Hundred and 00/100 Dollars (\$500.00) or confinement in jail not more than six (6) months, or both.

(C) Any proceeding for the revocation of any license issued hereunder shall be governed in accordance with the provisions of KRS 243.480.

Sec. 6.00

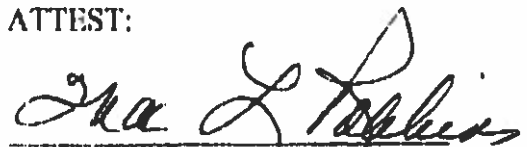
Sec 6.01 Other Ordinances

This Ordinance shall be effective immediately upon publication. Any Ordinances or parts of Ordinances in conflict herewith are hereby repealed.

Should any court of competent jurisdiction declare any portion of this Ordinance invalid for any reason, the remaining portions of this Ordinance shall be considered valid for all other legal purposes.


S. BRUCE HENDRICKSON, MAYOR

ATTEST:


INA LEMAR ROBBINS, CITY CLERK

FIRST READING: NOVEMBER 13, 2006

SECOND READING: NOVEMBER 28, 2006

PUBLICATION: 12/14/06